FILED
DEC 27 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 472

PRODUCTIVE INVENTIONS, INC.,
Petitioner,

v.

TRICO PRODUCTS CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

FRANK G. RAICHLE,
RUPERT WARREN,
ARNOLD WEISS,
Attorneys for Respondent.

RAICHLE, TUCKER AND MOORE,
806 Genesee Building,
Buffalo 2, New York,
Of Counsel.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

INDEX

PAGE

Questions Presented 2

Respondent's Statement of Case..... 2

Reasons Relied On, In Opposition..... 7

A. Petitioner is remote and its injury, if any, indirect and consequential..... 7

B. Treble damages are not recoverable for remote or indirect injuries..... 9

Conclusion 14

TABLE OF CASES.

Addylston Pipe Co. v. U. S., 175 U. S. 211, 243, 44 L. Ed. 136, 148..... 10

Ames v. American Tel. & Tel. Co., (1909) 166 F. 820 at 823 9

Apex Hosiery Co. v. Leader, 310 U. S. 469, 488-489, 84 L. Ed. 1311, 1320-1321.....9, 11

Breed v. American Tel. & Tel. Co., (1909) 166 F. 825.. 9

Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U. S. 390, 51 L. Ed. 241, affirming 127 F. 23..... 9

Coast v. Hunt Oil Co., (C. A. 5, 1952) 195 F. 2d 870... 11

Conference of Studio Unions v. Loews, Inc., (C. A. 9, 1951) 193 F. (2d) 51, cert. den. 342 U. S. 919, 96 L. Ed. 697 12

Corey v. Boston Ice Co., (1913) 207 F. 465..... 9

Corey v. Independent Ice Co., (1913) 207 F. 459..... 9

Gerli v. Silk Ass'n of America, (1929) 36 F. (2d) 959. 11

Harrison v. Paramount Pictures, Inc., 348 U. S. 828. Opinion below, (C. A. 2, 1954) 211 F. (2d) 405, affirming, on opinion below 115 F. S. 312.....11, 12

PAGE

Karseal Corp. v. Richfield Oil Corp., (C. A. 9, 1955) 211 F. (2d) 358 ..... 10, 13

Kobe v. Dempsey Pump Co., (C. A. 10, 1952) 198 A. (2d) 416 13

LaChapelle v. United Shoe Machinery Corp., (1950) 90 F. S. 721 14

Loeb v. Eastman Kodak Co., (C. A. 3, 1910) 183 F. 704, 709 ..... 9, 10

McWhirter v. Monroe Calculating Machine Co., (1948) 76 F. S. 456 14

Melrose Realty Co., Inc. v. Loews, Inc., CCH Trade Regulations Report, 68,150; Sept. 12, 1955 12

Peter v. Western Newspaper Union, (C. A. 5, 1953) 200 F. (2d) 867 11

Peter v. Western Newspaper Union, (C. A. 5, 1953) 200 F. (2d) 867, 872 14

Peterson v. Borden Co., (C. A. 7, 1931) 50 F. (2d) 644. 11

Robins Drydock & Repair Co. v. Flint, 275 U. S. 303 at 309; 72 L. Ed. 290 at 292 9

Roseland v. Pfister Mfg. Co., (C. A. 7, 1942) 125 F. (2d) 417 13

Rossman v. Pullman Co., (1936) 15 F. S. 325 11

Shatte v. International Alliance, (C. A. 9, 1950) 182 F. (2d) 158 12

United Copper Securities Co. v. Amalgamated Copper Co., (C. A. 2, 1916) 232 F. 574, 577 ..... 9, 10

U. S. v. Cooper Corp., 312 U. S. 600, 85 L. Ed. 1071 ... 9, 11

United States v. Richfield, 99 F. S. 280, aff'd 343 U. S. 922; 96 L. Ed. 1334 13

Vines v. General Outdoor Advertising Co., (C. A. 2, 1948) 171 F. (2d) 487 13

Westmoreland Asbestos Co. vs. Johns Manville Corp., (1939) 30 F. S. 389 11

STATUTES.

PAGE

Clayton Act, Act of October 15, 1914, 38 Stat. 731 ....9, 10
§ 3 (15 U. S. C. A. § 14) 3, 4
§4 (15 U. S. C. A. § 15) 2, 3, 7, 10
Amendment to the Clayton Act, by Act of July 7, 1955, Public Law 137, § 4A, 69 Stat. 283 11

Sherman Act, Act of July 2, 1890, 26 Stat. 209 9
§ 2 (15 U. S. C. A. § 2) 3, 4
§ 7 .....9, 10
§ 7, Repealed, effective Jan. 7, 1956, Act of July 7, 1955, Public Law 137, § 3, 69 Stat. 283 10

MISCELLANEOUS.

"Congress and the Monopoly Problem: Fifty Years of Antitrust Development: 1900-1950", House Document No. 599, 81st Congress, 2d Session; pp. 99-100; 35-97 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 472.

PRODUCTIVE INVENTIONS, INC.,
Petitioner,

v.

TRICO PRODUCTS CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Trico Products Corporation, respectfully submits its brief in opposition to the Petition of Productive Inventions, Inc. for a writ of certiorari to the United States Court of Appeals for the Second Circuit to review its order and judgment, dated July 20, 1955, affirming summary judgment against Petitioner as to Count I of the Complaint herein.

Questions Presented

1. Is a patent owner who granted to another on a royalty basis, an exclusive license to manufacture and sell under and for the full term of, all of his present and future patents, and who received royalties therefor exceeding the specified minimum, a "person * * * injured in his business or property" within Clayton Act § 4, so as to enable him to recover three-fold for royalties on sales lost by his exclusive licensee as a result of alleged anti-trust violations directed solely against licensee's business of manufacturing and selling?

2. May a patent licensor not engaged in the business of manufacturing or selling, maintain an action for treble damages under Clayton Act § 4 for royalties lost as an incidental result of alleged restrictive practices directed solely at the business of manufacturing or selling the patented articles carried on by the plaintiff's exclusive licensee?

Respondent's Statement of Case

This is an action brought by The Anderson Company (hereinafter called "Anco") and petitioner, Productive Inventions, Inc. (hereinafter called "Productive" or "petitioner") against Trico Products Corporation (hereinafter called "Trico") in the United States District Court for the Western District of New York. The complaint (App. 4-17)[1] contains two counts. The first count seeks treble damages under the anti-trust laws and the second count, which is not involved herein, complains of patent infringement.[2]

---

[1] "App." refers to pages of the Appendix below.

[2] Count II is still pending as to Anco and petitioner.

Count I of the complaint (App. 4-15) alleged that Trico had violated Sherman Act, § 2 (15 U. S. C. A. § 2) and Clayton Act, § 3 (15 U. S. C. A. § 14) in its manufacture and sale of automotive windshield wiper components,[3] and seeks treble damages under Clayton Act, § 4 (15 U. S. C. A. § 15).

The First Count of the complaint asserts two separate and distinct claims for treble damages: one, a direct claim on behalf of Anco, and the other, a dependent and incidental claim on behalf of petitioner. The District Court (Knight, Ch. J.) dismissed petitioner's dependent claim under Count I of the complaint on the ground that petitioner was not a "person * * * injured in his business or property" within the meaning of Clayton Act § 4, in a decision of limited scope which stated:

> "Each case must be dealt with on its own facts. All that is decided here is that the loss of Productive Inventions, Inc., if any, is beyond the limit of injuries cognizable under the anti-trust laws." (App. 4.)

The United States Court of Appeals for the Second Circuit unanimously affirmed the dismissal of Count I in a similarly limited opinion, stating:

> "No hard and fast rule can be laid down in these situations as the line between direct and incidental damage is not always definable with clarity. All we here determine is that under the facts pleaded appellant has no right to recover treble damages." (Pet. App. 4 (a))[4]

Insofar as the claim against Anco is concerned, it is a traditional pleading in a civil antitrust case between competitors. It alleges that both Anco and Trico are engaged

---

[3] Complaint Par. 6 (App. 5) defines "components" as: "the motor, the blade, the arm, and the linkage assembly connecting the motor to the arm, all of which together constitute elements of what is herein referred to as a 'windshield wiper assembly'."

[4] "Pet. App." refers to pages of the Appendix annexed to the petition for certiorari herein.

in competition in interstate commerce in the manufacture and sale of certain automotive windshield wiper components. (Complaint ¶ 20, App. 9; See also Pet. 3.)[5] It is alleged that Trico has attempted to monopolize, and has monopolized said alleged "interstate trade and commerce" in violation of Sherman Act § 2 (Complaint ¶ 25, App. 10-11); and that Trico has entered into contracts to sell and has sold such components upon the condition that the purchasers thereof would not deal in Anco's products, thereby restraining said alleged "interstate trade and commerce" in violation of Clayton Act § 3 (Complaint ¶ 24, App. 10).

Complaint Par. 26 (a-l) (App. 11-14) alleged 12 specific acts on the part of Trico, directed solely against Anco, which constituted violations of Sherman Act § 2 and Clayton Act § 3 as follows:

Complaint Par. 26 (a) (b) (c) and (d):

Threatened and actual refusal to sell components unless purchasers discontinued purchases of components from Anco "for the purpose of preventing the lawful competition of plaintiff Anco." (App. 11-12.)

Complaint Par. 26 (e) and (f):

Threatened price increases unless purchasers discontinued dealing in Anco's components. (App. 12.)

Complaint Par. 26 (g):

Exclusive sales contracts with the distributors of components. (App. 12.)

Complaint Par. 26 (h) and (k):

Made false representations to Anco's customers concerning: Anco's financial stability, quality of Anco's components, and Anco's infringement of Trico's patents, for the purpose of restraining the "lawful competition of plaintiff Anco". (App. 12-13.)

---

[5] Pet. refers to pages of the Petition for Certiorari herein.

Complaint Par. 26 (i) and (l):

> Caused applications to be filed for non-patentable inventions for the purpose of monopolizing and discouraging competition by Anco in said "trade and commerce" and for the purpose of delaying the granting of Anco's patent. (App. 12-14.)

Paragraph 27 (a-l) then alleged 12 results of Trico's said acts, upon Anco. None of said results are alleged to have been visited upon petitioner, Productive. Paragraph 28 alone alleges (in conclusory form) petitioner's dependent and indirect claim, to wit: but for Trico's acts, Anco would have sold at a substantial profit additional components and petitioner Productive "would have received additional royalties". (App. 15.)

The second claim contained in Count I of the complaint relates to petitioner and is the subject of this petition. The complaint is practically barren of allegations with respect to petitioner and, in fact, makes no reference to the business or property of petitioner, as being the foundation of this million dollar treble damage claim. The entire substance of the allegations with respect to Productive is that it is the record owner of certain patents under which Anco has manufactured and sold "components" by virtue of an exclusive license agreement (App. 32-41) providing for royalty payments, and that it would have received additional royalties if Anco's sales had not been restrained by Trico's unlawful activities (Complaint ¶29, App. 15).

The complaint does not allege that petitioner and Trico are in competition or that petitioner is engaged in commerce. Petitioner Productive is only mentioned in four paragraphs of the complaint as follows:

> Complaint Par. 1—Allegation of residence of Productive. (App. 5.)

Complaint Par. 23—Allegation that Anco manufactured and sold "components", covered by patents issued to Productive under an exclusive license agreement. (App. 10.)

Complaint Par. 28—Allegation that but for Trico's unlawful activities Anco "would have sold at a substantial profit a large number of additional motors, arms and blades and plaintiff Productive would have received additional royalties". (App. 15.)

Complaint Par. 29—Allegation of damage suffered by Productive. (App. 15.)

The tenuous nature of petitioner's claim was made more apparent in the course of the taking of depositions of the principal officers of the plaintiff corporations. John W. Anderson, president of Productive and Anco, testified that Productive is a personal holding company (App. 44) and described Productive's business as follows:

> "Q. What is the business of Productive Inventions, Inc.?
>
> A. Productive Inventions conducts experimental and developmental work and, in a way, supervises the matter of patenting various inventions in which it has an interest." (App. 46.)

Petitioner's answering affidavits upon the motion for summary judgment stated:

> "Insofar as the present action is concerned, Productive is in the business of licensing patents on windshield wiper components". (App. 31.)

Under its exclusive license agreement with Anco (App. 32-41) petitioner has completely divested itself of all right to manufacture and/or sell components covered either by any patents which it owns, or by any future or improvement patents which it may develop, secure or acquire (App. 33, 34-35; 41). By the terms of said license, Anco agreed

to pay petitioner a royalty equal to 3%[6] of the net sales price of any device (App. 36). In the event that the royalties during any twelve consecutive calendar months are less than $12,000.00, the license may become non-exclusive (App. 40). It is conceded that this minimum of $12,000.00 was greatly exceeded (Pet. 6; App. 29, 43). The license further provides that in the event the royalties on any device are less than $1,000.00 in any twelve consecutive months, the licensor may elect to make the license non-exclusive. Apparently, this has never occurred (App. 29 & 40).

Reasons Relied On, In Opposition

A. Petitioner is remote and its injury, if any, indirect and consequential.

The petition presents no question which warrants the granting of a writ of certiorari. The decision sought to be reviewed is not one of general application or even of general interest. It is expressly limited to the case at bar. The only question decided by the Courts below was whether, under the facts of this case, this particular petitioner had any status to seek three-fold damages and attorney's fees under Clayton Act § 4. The Court of Appeals carefully pointed out the limitations of its decision stating:

> "No hard and fast rule can be laid down in these situations as the line between direct and incidental damage is not always definable with clarity. All we here determine is that under the facts pleaded appellant has no right to recover treble damages." (Pet. App. 4(a).)

The decision of the District Court was similarly limited:

> "Each case must be dealt with on its own facts. All that is decided here is that the loss of Productive In-

[6] The license has been orally modified on several occasions, and the royalty rate was reduced from 3% to 1% because of sharp competition encountered by Anco (App. 10, 31, 29, 46).

ventions, Inc., if any, is beyond the limit of injuries cognizable under the anti-trust laws." (App. 4.)

The facts before the court as set forth in the Statement, *supra*, show that petitioner, Productive, is a personal holding company (App. 44) whose sole business is that of "licensing patents on windshield wiper components" (App. 31, 46). Petitioner is not now, and cannot in the future be, in competition with Trico, or with any other manufacturer, patentee, or seller of automotive windshield wiper components. Under its exclusive license agreement with Anco, petitioner has completely divested itself of all rights, either to retain, to manufacture, to use or to sell under, and during the full life of, any present or after acquired patents (App. 33, 34-35, 41). Petitioner's claim herein is dependent and indirect, since it is based upon the assumption that if Anco's sales of components had not been restrained by Trico's alleged unlawful activities, directed against Anco, petitioner "would have received additional[1] royalties" (Complaint 28, App. 15).

There is nothing herein which necessarily inhibits the rights of a patent owner. True, he may be foreclosed from the bonanza of treble damages if he sees fit to transfer to others all rights under all of his patents. This does not necessarily mean, as claimed by petitioner, that there is an "absence of any alternative or derivative remedy by petitioner against Respondent" (Pet. 6). Perhaps, if Trico had invaded any of petitioner's legal rights, petitioner might have a right to seek actual, untrebled damages in the appropriate local forum protecting such rights.

Nor is petitioner's argument valid that its standing is created by the license agreement royalty provision granting it "a fixed portion (e. g. 3%) of the price at which each

[1] The exclusive license provided for a fixed minimum royalty plus a percentage royalty (App. 40, 36). It is conceded that the minimum stipulated royalty was greatly exceeded (Pet. 6; App. 29, 43).

and every device is sold" (Pet. 6). A line of liability drawn under this concept would create potential infinite liability. Petitioner here, being a corporation, is not the patentee, but the assignor. The actual individual patentee might then also have standing under a percentage royalty license with petitioner. Petitioner's supplier, landlord and requirements contractor might have standing to claim treble damages. As stated by Justice Holmes in Robins Drydock & Repair Co. v. Flint:[8]

"The law does not spread its protection so far."

B. Treble damages are not recoverable for remote or indirect injuries.

The Sherman Act[9] created new and extraordinary rights of limited availability.[10] The provisions of the Act were not unambiguous and the courts were "left to give content to the statute".[11] Thereafter and prior to the enactment of the Clayton Act,[12] treble damage relief under Sherman Act § 7 was consistently denied to all who were not directly aimed at and injured.[13] Recovery was allowed only where the unlawful acts directly affected the plaintiff.[14]

---

[8] 275 U. S. 303 at 309; 72 L. ed. 290 at 292.

[9] Act of July 2, 1890, 26 Stat. 209.

[10] *U. S. v. Cooper Corp.*, 312 U. S. 600, 85 L. ed. 1071.

[11] *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 488-489, 84 L. Ed. 1311, 1320-1321.

[12] Act of October 15, 1914, 38 Stat. 731.

[13] *Loeb v. Eastman Kodak Co.*, (C. A. 3, 1910) 183 F. 704, 709 (shareholder and creditor)

"* * * the plaintiff did not receive any direct injury * * *. No conspiracy or combination against him as a stockholder or creditor is alleged. * * * Hence any injury which he, as a stockholder, received, was indirect, remote, and consequential".

United Copper Securities Co. v. Amalgamated Copper Co., (C. A. 2, 1916) 232 F. 574, 577. (Landlords and corporate officers and employees.)

Ames v. American Tel. & Tel. Co., (1909) 166 F. 820 at 823 (shareholder). "The only injury set forth is an injury to the corporation".

See also *Breed v. American Tel. & Tel. Co.* (1909) 166 F. 825;

Corey v. Independent Ice Co., (1913) 207 F. 459 (shareholder).

Corey v. Boston Ice Co., (1913) 207 F. 465 (corporate director and officer).

[14] *Chattanooga Foundry & Pipe Works v. City of Atlanta*, 203 U. S. 390, 51 L. Ed. 241, affirming 127 F. 23, where a city pipe purchaser was held to be

(Footnote continued on following page.)

In 1914 Congress enacted the Clayton Anti-trust Act[15] and § 4 thereof[16] provided as follows:

> "That any person who shall be injured in his business or property by reason of anything forbidden in the Anti-trust Laws * * * shall recover three-fold the damages by him sustained * * *."

Significantly, Clayton Act § 4 followed substantially the wording which previously appeared in Sherman Act § 7,[17] omitting the underscored words:

> "Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this Act * * * shall recover three-fold the damages by him sustained * * *."

Congress thus demonstrated its approval of judicial construction refusing treble damages to remotely and indirectly affected persons.

Thereafter the courts have consistently followed this interpretation and Congress has manifested its approval thereof by failing to legislate thereon despite other bills, amendments and/or additions to the anti-trust laws from time to time.[17a] Thus, the following plaintiffs have since been held to be remote and their injuries indirect: share-

---

(Footnote continued from preceding page.)
injured under § 7 by conspiracy of pipe makers in *Addyston Pipe Co. v. U. S.*, 175 U. S. 211, 243, 44 L. Ed. 136, 148: "The combination thus had a direct, immediate, and intended relation to and effect upon the subsequent contract to sell and deliver the pipe. It was to obtain that particular and specific result that the combination was formed. * * *" cf. *Karseal Corp. v. Richfield Oil Corp.*, (C. A. 9, 1955) 211 F. (2d) 358.
Loeb v. Eastman Kodak Co., (C. A. 3, 1910) 183 F. 704, 711.
United Copper Securities Co. v. Amalgamated Copper Co., (C. A. 2, 1916) 232 F. 574, 577.

[15] Act of October 15, 1914, Chap. 623, 38 Stat. 730.

[16] 15 U. S. C. A. § 15.

[17] Repealed, effective Jan. 7, 1956, Act of July 7, 1955, Public Law 137, § 3, 69 Stat. 283.

[17a] See "Congress and the Monopoly Problem: Fifty Years of Antitrust Development: 1900-1950", House Document No. 599, 81st Congress, 2d Session; pp. 99-100; 35-97.

holders,[18] creditors,[19] corporate officers and employees,[20] landlords,[21] and patentees not engaged in manufacturing.[22]

Mr. Justice Stone succinctly summed this up in *Apex Hosiery Co. v. Leader*,[23] stating:

> "The long time failure of Congress to alter the (Sherman) Act after it had been judicially construed, and the enactment by Congress of legislation which implicitly recognizes the judicial construction as effective, is persuasive of legislative recognition that the judicial construction is the correct one."

Where Congress has wished to alter the provisions of the anti-trust laws as interpreted by this court, it has not been reluctant so to do.[24]

This Court recently denied certiorari in *Harrison v. Paramount Pictures, Inc.*[25] where the following question was presented:

> "Whether the courts below erred in holding as a matter of law that the landlord-owner of a theatre, admittedly injured as a result of the *Paramount* conspiracy, nevertheless, has no standing as a private

---

[18] *Peterson v. Borden Co.*, (C. A. 7, 1931) 50 F. (2d) 644;
Coast v. Hunt Oil Co., (C. A. 5, 1952) 195 F. (2d) 870.
Peter v. Western Newspaper Union, (C. A. 5, 1953) 200 F. (2d) 867;
Gerli v. Silk Ass'n. of America, (1929) 36 F. (2d) 959;
Westmoreland Asbestos Co. v. Johns Manville Corp., (1939) 30 F. S. 389.

[19] *Gerli v. Silk Ass'n. of America, supra.*

[20] *Westmoreland Asbestos Co. v. Johns Manville, supra;*
Gerli v. Silk Ass'n. of America, supra.

[21] *Westmoreland Asbestos Co. v. Johns Manville, supra;*
Harrison v. Paramount Pictures, Inc., 115 F. S. 312, aff'd. on opinion below 211 F. (2d) 405, cert. den. 348 U. S. 828.

[22] *Rossman v. Pullman Co.*, (1936) 15 F. S. 325.

[23] 310 U. S. 469, 488, 84 L. ed. 1311, 1320.

[24] See Amendment to the Clayton Act, by Act of July 7, 1955, Public Law 137, § 4A, 69 Stat. 283, which gave the United States the right to sue for "actual damages" where treble damages were denied the Government in *U. S. v. Cooper Corp.*, 312 U. S. 600, 85 L. ed. 1071.

[25] 348 U. S. 828. Opinion below, (C. A. 2, 1954) 211 F. (2d) 405, affirming, on opinion below 115 F. S. 312.

suitor, and his property rights fall outside the protection of the antitrust laws."[26]

Petitioner's argument to this Court in the *Harrison* case stated:

"The decisions of the courts below squarely present the question of whether the owner of a theatre is a 'person' within the meaning of the language of Section 7 * * *."[27]

Judge Kirkpatrick, in reliance upon the affirmance of his decision in the *Harrison* case, granted summary judgment in *Melrose Realty Co., Inc. v. Loews, Inc.*[28]

This Court also recently denied certiorari in *Conference of Studio Unions v. Loews, Inc.*,[29] where the Court of Appeals stated at pp. 54-55:

"A conspiracy may have many purposes and objects; the conspirators may perform an almost infinite variety of acts in furtherance of the conspiracy; but, in order to state a cause of action under the anti-trust laws *a plaintiff must show more than that one purpose of the conspiracy was a restraint of trade and that an act has been committed which harms him. He must show that he is within that area of the economy which is endangered by a breakdown of competitive conditions in a particular industry. Otherwise he is not injured 'by reason' of anything forbidden in the anti-trust laws.*

Such a construction is in accordance with the basic and underlying purposes of the anti-trust laws to preserve competition and to protect the consumer. Recovery and damages under the anti-trust law is available to those who have been directly injured by the lessening of competition and withheld from those who

[26] Harrison petition for certiorari, p. 3.

[27] Ibid. p. 32.

[28] CCH Trade Regulations Reporter, 68,150; Sept. 12, 1955.

[29] (C. A. 9, 1951) 193 F. (2d) 51, cert. den. 342 U. S. 919, 96 L. ed. 697. See also *Shatte v. International Alliance*, (C. A. 9, 1950) 182 F. (2d) 158.

seek the windfall of treble damages because of incidental harm." (Italics supplied.)

In contrast, in the recent case of *Karseal Corp. v. Richfield Oil Corp.*,[30] plaintiff manufactured but did not distribute car wax, and the defendant Richfield had entered into exclusive sales agreements with service station operators. The complaint incorporated the findings, conclusions of law and final judgment in *United States v. Richfield*,[31] where it was found that the unlawful practices "have had the necessary and intended effect of denying manufacturers and suppliers of * * * automotive accessories, competitive to those manufactured or sponsored by Richfield, access to a substantial number of potential outlets * * *." The Court, in the Karseal case, found that:

> "The impact was on the market * * * the illegal acts were directed against the manufacturers and distributors of the competing products, including Karseal's wax * * *. We conclude that Karseal under the alleged facts of this case is 'within that area of the economy which is endangered by a breakdown of competitive conditions in a particular industry' * * * that Karseal was within the target area of the illegal practices of Richfield; that Karseal was not only hit but was aimed at, by Richfield."[32]

Plaintiffs, seemingly remote, have been accorded standing where they were aimed at and hit: division of market reducing sales by exclusive sales agents;[33] transfer of advertising account from salesman to a competitor;[34] boycott of sales company's products;[35] violation of duty owed

---

[30] (C. A. 9, 1955) 221 F. (2d) 358.

[31] 99 F. S. 280, aff'd. 343 U. S. 922, 96 L. ed. 1334.

[32] Ibid. pp. 364-365.

[33] *Roseland v. Pfister Mfg. Co.*, (C. A. 7, 1942) 125 F. (2d) 417.

[34] *Vines v. General Outdoor Advertising Co.*, (C. A. 2, 1948) 171 F. (2d) 487.

[35] *Kobe v. Dempsey Pump Co.*, (C. A. 10, 1952) 198 A. (2d) 416.

shareholder;[36] discounts intended to prevent sales;[37] and forcing patentee, to sacrifice patents.[38]

To disturb now this firmly established and long recognized legal principle and extend the punitive remedy of treble damages to any remote person who could make a showing of damage would result in chaos. Literally thousands of anti-trust cases have been settled for many millions of dollars and many other cases have been litigated and disposed of by final judgments. To now hold that separate and independent causes of action exist in favor of remote plaintiffs would cause a veritable deluge of new lawsuits seeking a treble windfall.[39] Multiplicity of actions would result and the liability created would extend beyond all practical limit.

Conclusion.

It is respectfully submitted that for the foregoing reasons the petition for certiorari should be denied.

Respectfully submitted,

FRANK G. RAICHLE,
RUPERT WARREN,
ARNOLD WEISS,

Attorneys for Respondent.

RAICHLE, TUCKER AND MOORE,
Of Counsel.

---

[36] *Peter v. Western Newspaper Union*, (C. A. 5, 1953) 200 F. (2d) 867, 872.
[37] *McWhirter v. Monroe Calculating Machine Co.*, (1948) 76 F. S. 456.
[38] *LaChapelle v. United Shoe Machinery Corp.*, (1950) 90 F. S. 721.
[39] In some cases the statute of limitations has been tolled for many years pending the determination of a government action.